

Pl. 104. So that in whatever way this answer of English and wife is taken, as nothing therein set forth, as coming from her, can affect his interest; and as he professes, so far as he answers for himself, to know nothing of the matter, the several parts of it, which so distinctly profess to be the allegations of each, may safely and most advantageously for each be treated as if they had been set forth in regular and entirely separate answers from each of them.

Taking this answer in this way, then, it appears, that the defendant David English, without expressly denying any thing, admits nothing; but puts the whole of the plaintiff's case in issue. His defence goes to the very origin, foundation and existence of the plaintiff's whole cause of suit; and, therefore, it behooves them to sustain their whole case in every way against him, or they must totally fail. The defendant Lydia, in effect, admits the original foundation of the plaintiff's cause of suit; but, by way of avoidance, considering it as a contract of bargain and sale of a tract of land, avers, in substance, that the purchase money, in the modes therein described, has been paid and fully

271 satisfied. This defence, *being one by which she confesses and avoids the cause of suit, it lays upon her to prove her allegations in avoidance; or otherwise, if the plaintiffs sustain their cause against the broad defence of her husband David, they must be relieved as prayed against both of them. Again, the defendant Richard Henderson pleads the Statute of Limitations; by the form of which he, in substance, avers, that, although the cause of suit might have once existed; yet, as the original contract had not been in any way renewed by any recent acknowledgment or promise, it has been altogether barred by the prescribed lapse of time. If this be a plea properly applicable to the nature of this case, and if it be in fact true, then, as it goes to the whole cause of suit, and shows that it has been totally barred, the plaintiffs can have no relief whatever.

It is perfectly clear, therefore, from what has been said, that if either one of these three defences be sustained, the plaintiffs can have no relief; and that their bill must be dismissed with costs, notwithstanding it might otherwise have been taken *pro confesso* against the two defendants who have made default.

The plaintiffs have stated their case with a double aspect, so as to entitle themselves to relief in either of the alternatives upon which they rely. They have rested their case upon its being considered either as a conveyance in trust, or as a bargain and sale, leaving the purchase money unpaid. They have stated their case in this way, as they believe it to have been; but as a reason for not being more exact in every particular, they say, "of this, or of the terms of the contract, if any, they have not been able to discover any positive proof;" and thus admit, that their statements